

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND  
UNBEATABLESALE.COM, INC.**

**1. RECITALS**

**1.1 The Parties**

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and UnbeatableSale.com, Inc. (“UnbeatableSale”). APS&EE and UnbeatableSale shall hereinafter collectively be referred to as the “Parties”.

**1.1.2** APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

**1.1.3** UnbeatableSale is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

**1.2 Allegations**

**1.2.1** APS&EE alleges that UnbeatableSale sold the Fencer Wire brand of galvanized hardware cloth, including 19 Gauge, ½” Mesh, 5’ x 24” (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to unsafe levels of lead, without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On January 9, 2017, a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, was provided by APS&EE to Fencer Wire, CAP Barbell Inc., Wal-mart Stores, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. On April

13, 2017, a Supplemental Sixty-Day Notice of Violation (“Supplemental Notice”), along with a Certificate of Merit, was provided by APS&EE to UnbeatableSale, Fencer Wire, a Series of CAP Investing, Series LLC, CAP Barbell Inc., Wal-mart Stores, Inc., CAP Investing, Series LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The 60-Day Notice and Supplemental Notice shall hereinafter collectively be referred to as the “Notices.”

### **1.3 No Admissions**

UnbeatableSale denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that UnbeatableSale has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by UnbeatableSale but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party’s counsel.

## **2. INJUNCTIVE RELIEF**

As of the Effective Date, UnbeatableSale shall not distribute, supply, and/or sell the Products in California unless clear and reasonable Proposition 65 warnings are provided with each unit or on the webpage listing the Products for sale with the following specific warning with the capitalized and emboldened wording:

**“WARNING:** This product contains lead, a chemical known to the State

of California to cause cancer and birth defects or other reproductive harm.”

UnbeatableSale asserts that it is not the manufacturer of the Products and UnbeatableSale does not control the manufacturing process of the Products in any way. If it has reason to believe that the Products contain additional chemicals listed under Proposition 65, UnbeatableSale may elect to use the word “chemicals” in place of “a chemical”. Each unit or the applicable webpage shall carry said warning directly on each unit or its label or package or on the applicable webpage in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer prior to purchase.

If modification or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning requirements or options different from those set forth above, UnbeatableSale may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

### **3. PAYMENTS**

UnbeatableSale shall reimburse a portion of APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for work performed through execution of this Agreement. Accordingly, UnbeatableSale shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of six thousand dollars (\$6,000.00). This payment shall be held in escrow by Lucas T. Novak, and released thirty (30) days after submission of this Agreement to the California Attorney General. In the event the California Attorney General objects to this Agreement, the payment shall be promptly returned to UnbeatableSale, pending the ultimate resolution of this matter. UnbeatableSale shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK

8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

UnbeatableSale asserts that it is not the manufacturer of the Products or involved in the manufacturing of the Products. Because of this, and including but not limited to the other factors listed in California Health & Safety Code section 25249.7(b)(2), 11 Cal. Code Regs. section 3203, and the entities not released pursuant to section 4.1 of this Agreement, the parties agree that no Civil Penalty is due from UnbeatableSale with respect to this Agreement.

#### **4. RELEASES**

##### **4.1 APS&EE's Release Of UnbeatableSale**

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases UnbeatableSale, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, downstream marketplace hosts, downstream manufacturers, downstream suppliers, downstream distributors, downstream wholesalers, downstream customers, downstream licensors, downstream licensees, downstream retailers, downstream franchisees, and downstream cooperative members, including but not limited to Wal-Mart Stores, Inc. and its subsidiaries (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notices regarding unwarned exposures to lead in the Products sold and/or offered for sale by UnbeatableSale in California before and up to the Effective Date. This Agreement does not act as a release of Fencer Wire, a Series of CAP Investing, Series LLC, CAP Barbell Inc., and/or CAP Investing, Series LLC.

##### **4.2 UnbeatableSale's Release Of APS&EE**

UnbeatableSale, acting in its individual capacity and on behalf of the Released Parties, by this Agreement and after thirty (30) days of the submission of this Agreement to the California Attorney General with no objection from the Attorney General, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for

actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against UnbeatableSale in this matter.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

#### **5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

#### **6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

#### **7. NOTICES**

All correspondence and Notices required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO UnbeatableSale: Attention: Eli Fisher 95 Lehigh Avenue, Suite 5 Lakewood, NJ 08701	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
--	--

## 8. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

///

///

///

///

///

///

///

///

///

///

///

///

///

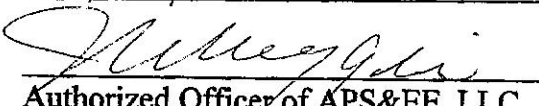
///

9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.


**AGREED TO:**

Date: 8/24/17

By:   
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: 8/21/17

By:   
Authorized Officer of UnbeatableSale.com, Inc.